

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

SESSION LAW 2011-330  
SENATE BILL 267

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES  
TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

**BUSINESS AND EXCISE TAXES**

**SECTION 1.** Section 31.7(e) of S.L. 2010-31 reads as rewritten:

"**SECTION 31.7.(e)** G.S. 105-37.1(a)(1), as amended by subsection (a) of this section, becomes effective ~~August 1, 2010~~, February 1, 2009, and applies retroactively to charges for admission received before that date or on or after that date. G.S. 105-37.1(a)(2), as amended by subsection (a) of this section, becomes effective January 1, 2011, and applies to admission tickets sold on or after that date. The remainder of this section is effective when it becomes law."

**SECTION 2.(a)** G.S. 105-113.4 reads as rewritten:

**"§ 105-113.4. Definitions.**

The following definitions apply in this Article:

(1) Affiliate. – A person who directly or indirectly controls, is controlled by, or is under common control with another person.

(1a) Affiliated manufacturer. – A manufacturer licensed under G.S. 105-113.12 who is an affiliate of a manufacturer licensed under G.S. 105-113.12.

~~(1)~~(1b) Cigar. – A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

~~(1a)~~(1c) Cigarette. – Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

...

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of tobacco products, other than cigarettes, and is not a retail dealer. ~~An "affiliate" is a person who directly or indirectly controls, is controlled by, or is under common control with another person.~~

...."

**SECTION 2.(b)** G.S. 105-113.10 reads as rewritten:

**"§ 105-113.10. Manufacturers ~~shipping to distributors exempt~~ exempt from paying tax.**

(a) Shipping to Other Distributors. – Any manufacturer shipping cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes



levied in this Part. No manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user.

(b) Shipping for Affiliated Manufacturer. – A manufacturer may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part on cigarettes that are manufactured by an affiliated manufacturer and temporarily stored at and shipped from its facilities."

**SECTION 2.(c)** G.S. 105-113.21(b) reads as rewritten:

"(b) Refund. – A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer as provided in this subsection and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the unsalable cigarettes. The distributor must return the cigarettes to the manufacturer of the cigarettes or to the affiliated manufacturer who is contracted by the manufacturer of the cigarettes to serve as the manufacturer's agent for the purposes of validating quantities and disposing of unsalable cigarettes."

**SECTION 3.** G.S. 105-120.2(f) is repealed.

**SECTION 4.** G.S. 105-129.50 is amended by adding a new subdivision to read:

"§ **105-129.50. Definitions.**

The definitions in section 41 of the Code apply in this Article. In addition, the following definitions apply in this Article:

(1) Development tier one area. – Defined in G.S. 143B-437.08.

...."

**SECTION 5.** G.S. 105-130.4(t2) and G.S. 105-122(c1)(3) are repealed.

**SECTION 6.** G.S. 105-41(a)(8) and (a)(9) read as rewritten:

"(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars (\$50.00).

...

(8) A real estate ~~broker or a real estate salesman~~, broker as defined in G.S. 93A-2. A real estate broker ~~or a real estate salesman~~ who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.

(9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real estate broker ~~or a real estate salesman~~ is required to obtain only one license under this section to cover both activities."

**SECTION 7.** G.S. 105-113.82(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute annually a percentage of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31 to the counties or cities in which the retail sale of these beverages is authorized in the entire county or city. ~~For purposes of this subsection, the term "net amount" means gross collections less refunds and amounts credited to the Department of Commerce under G.S. 105-113.81A.~~ The percentages to be distributed are as follows:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty and forty-seven hundredths percent (20.47%).

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), forty-nine and forty-four hundredths percent (49.44%).

- (3) Of the tax on fortified wine levied under G.S. 105-113.80(b), eighteen percent (18%)."

**SECTION 8.** G.S. 105-125(b) reads as rewritten:

"(b) Certain Investment Companies. – A corporation doing business in North Carolina that meets one or more of the following conditions may, in determining its ~~basis capital stock, surplus, and undivided profits base~~ for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or governments:

- (1) A regulated investment company. – A regulated investment company is an entity that qualifies as a regulated investment company under section 851 of the Code.
- (2) A REIT, unless the REIT is a captive REIT. – The terms "REIT" and "captive REIT" have the same meanings as defined in G.S. 105-130.12."

**SECTION 9.** G.S. 105-127(f) reads as rewritten:

"(f) After the end of the income year in which a domestic corporation is dissolved pursuant to Part 1 of Article 14 of Chapter 55 of the General Statutes, the corporation is no longer subject to the tax levied in this Article unless the Secretary of Revenue finds that the corporation has engaged in business activities in this State not appropriate to winding up and liquidating its business and affairs."

**SECTION 10.** G.S. 105-228.8(e) reads as rewritten:

"(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums. ~~For purposes of this section, seventy five percent (75%) of the one and thirty three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection.~~"

## PERSONAL TAXES

**SECTION 11.** Section 4 of S.L. 2011-5 reads as rewritten:

"**SECTION 4.** This act is effective when it becomes ~~law~~ law and applies to the estates of decedents dying on or after January 1, 2011. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after May 1, 2010, that increase North Carolina taxable income for the 2010 taxable year become effective for taxable years beginning on or after January 1, 2011."

**SECTION 12.(a)** If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.1(19), as repealed in that act, is reenacted.

**SECTION 12.(b)** If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(a1) and (a2), as enacted in that act, read as rewritten:

"(a1) Personal Exemption. – In calculating North Carolina taxable income, a taxpayer may deduct an exemption amount equal to the amount listed in the table below based on the taxpayer's filing status and adjusted gross income. The taxpayer is allowed the same ~~number of~~ number personal exemptions ~~claimed~~ allowed under section 151 of the Code for the taxable year.

Filing Status	Adjusted Gross Income	Personal Exemption
Married, filing jointly	Up to \$100,000	\$2,500
	Over \$100,000	\$2,000
Head of Household	Up to \$80,000	\$2,500
	Over \$80,000	\$2,000
Single	Up to \$60,000	\$2,500
	Over \$60,000	\$2,000

Married, filing separately	Up to \$50,000	\$2,500
	Over \$50,000	\$2,000

(a2) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct either the standard deduction amount listed in the table below for that taxpayer's filing status or the itemized deductions amount ~~elected~~ claimed under section 63 of the Code. ~~A taxpayer may not deduct both the standard deduction amount and the itemized deductions amount.~~ In the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer's spouse claims itemized deductions for State purposes.

A taxpayer that deducts the standard deduction amount under this subsection and is entitled to an additional deduction amount under section 63(f) of the Code for the aged or blind may deduct an additional amount under this subsection. The additional amount the taxpayer may deduct is six hundred dollars (\$600.00) in the case of an individual who is married and seven hundred fifty dollars (\$750.00) in the case of an individual who is not married and is not a surviving spouse. The taxpayer is allowed the same number of additional amounts that the taxpayer claimed under the Code for the taxable year.

Filing Status	Standard Deduction
Married, filing jointly	\$6,000
Head of Household	4,400
Single	3,000
Married, filing separately	3,000."

**SECTION 12.(c)** If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(b)(22), as enacted in that act, reads as rewritten:

"(22) ~~The first~~ An amount not to exceed fifty thousand dollars (\$50,000) of net business income the taxpayer receives during the taxable year. In the case of a married couple filing a joint return where both spouses receive or incur net business income, the maximum dollar amounts apply separately to each spouse's net business income, not to exceed a total of one hundred thousand dollars (\$100,000). For purposes of this subdivision, the term "business income" does not include income that is considered passive income under the Code."

**SECTION 12.(d)** If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(c)(3) reads as rewritten:

"(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income ~~tax or tax,~~ as state or local general sales ~~tax~~ tax, or as qualified motor vehicle tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under ~~the Code reduced by the amount the taxpayer is required to add to taxable income under subdivision (4) of this subsection.~~ subsection (a2) of this section."

**SECTION 12.(e)** If House Bill 200, 2011 Regular Session, becomes law, then G.S. 105-134.6(c)(12) is repealed.

**SECTION 12.(f)** This section is effective for taxable years beginning on or after January 1, 2012.

**SECTION 13.** G.S. 105-134.6(d)(8) reads as rewritten:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

- (8) For taxable years 2011 through 2013, a taxpayer who made an addition under subdivision (7) of this subsection may deduct ~~one-third~~ the following amounts:
- a. For a taxpayer who made an addition under sub-subdivision (7)a. of this subsection, one-third of the taxpayer's net operating loss absorbed on the taxpayer's 2003, 2004, ~~2005, and 2006~~ and 2005 federal returns under section 172(b)(1)(H) or section 810(b)(4) of the Code. Code, with the exception of the portion of the net operating loss of an eligible small business absorbed on the taxpayer's 2003, 2004, and 2005 federal returns.
  - b. For a taxpayer who made an addition under sub-subdivision (7)b. of this subsection, one-third of the taxpayer's net operating loss absorbed on the taxpayer's 2004, 2005, and 2006 federal returns under section 172(b)(1)(H) or section 810(b)(4) of the Code, with the exception of the portion of the net operating loss of an eligible small business absorbed on the taxpayer's 2004, 2005, and 2006 federal returns."

**SECTION 14.** Reserved.

## **SALES AND USE TAX AND ARTICLE 5F TAXES**

**SECTION 15.(a)** G.S. 105-164.3(25), (27), (27b), and (30a) reads as rewritten:

### **"§ 105-164.3. Definitions.**

The following definitions apply in this Article:

- ...
- (25a) Over-the-counter drug. – A drug that can be dispensed under federal law without a prescription and is required by 21 C.F.R. § ~~210.66~~ 201.66 to have a label containing a "Drug Facts" panel and a statement of its active ingredients.
- ...
- (27) Prepaid telephone calling service. – Prepaid ~~wireline~~ calling service or prepaid wireless calling service.
- ...
- (27b) Prepaid ~~wireline~~ calling service. – A right that meets all of the following requirements:
- a. Authorizes the exclusive purchase of ~~wireline~~ telecommunications service.
  - b. Must be paid for in advance.
  - c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.
  - d. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis.
- ...
- (30a) Professional motorsports racing team. – A racing team that satisfies all of the following conditions:
- a. The team is operated for profit.
  - b. A majority of the revenues of the team is derived from sponsorship of the racing team and prize money. The team does not claim a deduction under section 183 of the Code.

- c. The team competes in at least sixty-six percent (66%) of the races sponsored in a race series in a single season by a motorsports sanctioning body."

**SECTION 15.(b)** G.S. 105-164.3 is amended by adding a new subdivision to read: "(33b) Related member. – Defined in G.S. 105-130.7A."

**SECTION 15.(c)** G.S. 105-164.14A(a)(4) and (a)(5) read as rewritten:

**"§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

...

- (4) Motorsports team or sanctioning body. – A professional motorsports racing ~~team or a team~~, a motorsports sanctioning body ~~body~~, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after January 1, 2011.
- (5) Professional motorsports team. – A professional motorsports racing team or a related member of a team is allowed a refund of fifty percent (50%) of the sales and use tax paid by it in this State on tangible personal property, other than tires or accessories, that comprises any part of a professional motorsports vehicle. For purposes of this subdivision, "motorsports accessories" includes instrumentation, telemetry, consumables, and paint. This subdivision is repealed for purchases made on or after January 1, 2014."

**SECTION 15.(d)** Subsection (b) this section and G.S. 105-164.14A(a)(4), as amended by subsection (c) of this section, apply retroactively to purchases made on or after January 1, 2005. G.S. 105-164.14A(a)(5), as amended by subsection (c) of this section, applies retroactively to purchases made on or after July 1, 2007.

**SECTION 16.** G.S. 105-164.4(a)(3) reads as rewritten:

- "(3) A tax at the general rate applies to the gross receipts derived from the rental of an accommodation. The tax does not apply to (i) a private residence or cottage that is rented for fewer than 15 days in a calendar year or to year; (ii) an accommodation rented to the same person for a period of 90 or more continuous days; or (iii) an accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity.

Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental.

A person who provides an accommodation that is offered for rent is considered a retailer under this Article. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed and, within three business days of receiving the

notice, the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales price. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this subdivision. The liability of a rental agent for the tax imposed by this subdivision relieves the provider of the accommodation from liability. A rental agent includes a real estate broker, as defined in G.S. 93A-2.

The following definitions apply in this subdivision:

- a. Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.
- b. Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation."

**SECTION 17.** G.S. 105-164.4C(h)(5) reads as rewritten:

"(h) Definitions. – The following definitions apply in this section:

- ...
- (5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid ~~wireline~~ telephone calling service, except the exclusive use requirement.

...."

**SECTION 18.** G.S. 105-164.13(12), (26a), (33), (38), and (49) read as rewritten:

"§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

- ...
- (12) Sales of any of the following items:
  - a. Prosthetic devices ~~devices~~ for human use.
  - b. Mobility enhancing equipment sold on a prescription.
  - c. Durable medical equipment sold on prescription.
  - d. Durable medical supplies sold on prescription.

...

- (26a) Food sold not for profit by a public school cafeteria to a child care center that participates in the Child and Adult Care Food Program of the Department of ~~Public Instruction~~ Health and Human Services.

...

(33a) Tangible personal property sold by a retailer to a purchaser within or without this State, when the property is delivered by the retailer in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State and the purchaser does not subsequently use the property in this State.

...

(38) Food and other items lawfully purchased under the Food Stamp Program, 7 U.S.C. § 2011, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental ~~Food~~ Nutrition Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental ~~Food~~ Nutrition Program.

...

(49) Installation charges when the charges are separately ~~stated~~ stated on the invoice at the time of sale."

**SECTION 19.** G.S. 105-164.13D(a) reads as rewritten:

"(a) The taxes imposed by this Article do not apply to the Energy Star qualified products listed in this section if sold between 12:01 A.M. on the first Friday of November and 11:59 P.M. the following Sunday. The qualified products are:

- (1) Clothes washers.
- (2) Freezers and refrigerators.
- (3) Central air conditioners and room air conditioners.
- (4) Air-source heat ~~pumps and geothermal heat pumps.~~
- (5) Ceiling fans.
- (6) Dehumidifiers.
- (7) Programmable thermostats."

**SECTION 20.(a)** G.S. 105-164.14A(a)(1) and (a)(4), as amended by this act, read as rewritten:

**"§ 105-164.14A. Economic incentive refunds.**

(a) Refund. – The following taxpayers are allowed an annual refund of sales and use taxes paid under this Article:

(1) Passenger air carrier. – An interstate passenger air carrier is allowed a refund of the sales and use tax paid by it on fuel in excess of two million five hundred thousand dollars (\$2,500,000). The amount of sales and use tax paid does not include a refund allowed to the interstate passenger air carrier under G.S. 105-164.14(a). This subdivision is repealed for purchases made on or after ~~January 1, 2011.~~ January 1, 2013.

...

(4) Motorsports team or sanctioning body. – A professional motorsports racing team, a motorsports sanctioning body, or a related member of such a team or body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For purposes of this subdivision, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motorsports testing. This subdivision is repealed for purchases made on or after ~~January 1, 2011.~~ January 1, 2013.

...."

**SECTION 20.(b)** This section applies retroactively to purchases made on or after January 1, 2011.

**SECTION 21.** G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases the items listed in this subsection ~~tangible personal property other than a boat or an aircraft, digital property, or a service~~ outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14. The items are:

- (1) Tangible personal property other than a boat or an aircraft.
- (2) Digital property.
- (3) A service."

**SECTION 22.** G.S. 105-187.51C(c) reads as rewritten:

"(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the ~~combined general rate~~ applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed ~~at the combined general rate~~ from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

**SECTION 23.** A facilitator is not liable for an overcollection or undercollection of sales tax or local occupancy tax if the facilitator has made a good faith effort to comply with the law and collect the proper amount of tax as the result of the change under Section 31.6 of S.L. 2010-31 regarding a facilitator's collection and remittance obligations imposed under G.S. 105-164.4(a)(3), 153A-155(c), and 160A-215(c). This applies only to the period beginning January 1, 2011, and ending April 1, 2011.

**SECTION 24.** Section 9 of S.L. 2010-91 reads as rewritten:

"**SECTION 9.** Section 6 of this act becomes effective January 1, 2010. Section 7 of this act is effective when it becomes law and applies retroactively to sales made on or after October 1, 2007. Section 8 of this act is effective when it becomes law, applies to all agreements in effect on or entered into after that date, and expires January 1, 2013. The remainder of this act becomes effective July 1, 2010, and applies to sales made on or after that date."

**SECTION 25.(a)** G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

- (1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.
- (2) The amount of sales or use tax due and paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax

imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

**SECTION 25.(b)** G.S. 105-187.52 reads as rewritten:

**"§ 105-187.52. Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in ~~addition to lieu~~ of the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax due and paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina.

(c) Exemption. – State agencies are exempted from the privilege taxes imposed by this Article."

**SECTION 26.(a)** G.S. 105-164.14 is amended by adding a new subsection to read:

"(p) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

**SECTION 26.(b)** G.S. 105-164.14A is amended by adding a new subsection to read:

"(d) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

**SECTION 26.(c)** G.S. 105-164.14B is amended by adding a new subsection to read:

"(g) Not an Overpayment. – Taxes for which a refund is allowed under this section are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

**SECTION 27.** G.S. 105-164.15A(a)(1) reads as rewritten:

"(a) Services. – The effective date of a tax change for a service taxable under this Article is administered as follows:

- (1) For a service that is provided and billed on a monthly or other periodic basis:
  - a. A new tax or a tax rate increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date. ~~For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.~~
  - b. A tax repeal or a tax rate decrease applies to bills rendered on or after the effective date."

**SECTION 28.** G.S. 105-164.28 reads as rewritten:

**"§ 105-164.28. Certificate of ~~resale~~ exemption.**

(a) Seller's Responsibility. – A seller who accepts a certificate of ~~resale~~ exemption from a purchaser has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

- (1) For a sale made in person, the certificate is signed by the purchaser and states the purchaser's name, address, registration number, and type of business.
- (2) For a sale made in person, the item sold is the type of item typically sold by the type of business stated on the certificate.
- (3) For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, registration number, and type of business and maintains this information in a retrievable format in its records.

(b) Purchaser's Liability. – A purchaser who does not resell an item purchased under a certificate of ~~resale exemption~~ is liable for any tax subsequently determined to be due on the sale."

**SECTION 29.** G.S. 105-164.4B is amended by adding a new subsection to read:

"(f) Digital Property. – A purchaser receives digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first."

## **EXCISE TAX ON CONVEYANCES**

**SECTION 30.(a)** G.S. 105-228.37 reads as rewritten:

### **"§ 105-228.37. Refund of overpayment of tax.**

(a) Refund Request. – A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) Hearing by County. – A board of county commissioners must conduct a hearing on a request for ~~refund in accordance with the procedures that apply to a hearing held by a board of equalization and review on an appeal concerning the listing or appraisal of property.~~ refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the board must notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the board. The board must make a decision on the requested refund within 90 days after conducting a hearing under this subsection. ~~the board decides that a refund is due, it must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may appeal the decision to the Property Tax Commission.~~

(c) ~~Review by Commission.~~ Process if Refund Granted. – If the board of commissioners decides that a refund is due, it must refund the overpayment, together with any applicable interest, to the taxpayer and inform the Department of the refund. The Department may assess the taxpayer for the amount of the refund in accordance with G.S. 105-241.9 if the Department disagrees with the board's decision. ~~The procedure in G.S. 105-290 for the appeal to the Property Tax Commission of a decision of a board of equalization and review concerning the listing or appraisal of property applies to the appeal of a denial by a board of county commissioners of a request for a refund of tax paid under this Article. If the Commission determines that a refund is due, the board of county commissioners must refund the county's portion of the overpayment, together with any applicable interest, to the taxpayer. A decision of the Commission is binding on the Secretary and on a board of county commissioners.~~

(d) ~~Judicial Review.~~ Process if Refund Denied. – A decision of the Property Tax Commission is subject to judicial review in accordance with G.S. 7A-29. If the board of commissioners finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may request a departmental review of the denial of the refund in accordance with the procedures set out in G.S. 105-241.11.

(e) Recording Correct Deed. – Before a tax is refunded, the taxpayer must record a new instrument reflecting the correct amount of tax due. If no tax is due because an instrument was recorded in the wrong county, then the taxpayer must record a document stating that no tax was owed because the instrument being corrected was recorded in the wrong county. The taxpayer must include in the document the names of the grantors and grantees and the deed book and page number of the instrument being corrected.

When a taxpayer records a corrected instrument, the taxpayer must inform the register of deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the

register of deeds a copy of the decision granting the refund that shows the correct amount of tax due. The correcting instrument must include the deed book and page number of the instrument being corrected. The register of deeds must notify the county finance officer and the Secretary when the correcting instrument has been recorded.

(f) Interest. – An overpayment of tax bears interest at the rate established in G.S. 105-241.21 from the date that interest begins to accrue. Interest begins to accrue on an overpayment 30 days after the request for a refund is filed by the taxpayer with the board of county commissioners."

**SECTION 30.(b)** G.S. 105-228.30(b) reads as rewritten:

"(b) The register of deeds of each county must remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county must credit one-half of the proceeds to the county's general fund and remit the remaining one-half of the proceeds, less taxes refunded and the county's allowance for administrative expenses, to the Department of Revenue on a monthly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in collecting and remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue must credit seventy-five percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. 113-77.7."

## GENERAL ADMINISTRATION

**SECTION 31.(a)** G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(b) Definitions. – The following definitions apply in this Article:

...  
(4b) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.

...."

**SECTION 31.(b)** G.S. 105-129.81(13) and (18) read as rewritten:

### "§ 105-129.81. Definitions.

The following definitions apply in this Article:

...  
(13) Information technology and services. – An industry in one of the ~~following:~~following, as defined by NAICS:  
a. ~~Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.~~Data processing industry group 518.  
b. ~~Software publishers industry group 5112 as defined by NAICS.~~5112.  
c. ~~Computer systems design and related services industry group 5415 as defined by NAICS.~~5415.  
d. An Internet activity included in industry group 519130.

...  
(18) ~~NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.~~Defined in G.S. 105-228.90.

...."

**SECTION 31.(c)** G.S. 105-164.3(23a) reads as rewritten:

"(23a) ~~NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007.~~Defined in G.S. 105-228.90."

**SECTION 32.** G.S. 105-236(a)(2) reads as rewritten:

"(a) Penalties. – The following civil penalties and criminal offenses apply:

...

- (2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars (\$5.00). In cases in which the ~~taxpayer~~ taxpayer, after written notification by the Department, fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars (\$1,000).

...."

**SECTION 33.(a)** G.S. 105-256(a)(9) reads as rewritten:

"(a) Publications. – The Secretary shall prepare and publish the following:

...

- (9) A final decision of the Secretary in a contested tax case. ~~The Secretary must redact identifying taxpayer information from a final decision prior to publication.~~"

**SECTION 33.(b)** G.S. 105-259(b)(27) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

- (27) To provide a ~~report~~ publication required under this Chapter."

**SECTION 33.(c)** G.S. 150B-21.17(a)(5) is repealed.

**SECTION 34.** G.S. 105-241.9(b) reads as rewritten:

"(b) Time Limit. – The Secretary must propose an assessment within the statute of limitations for proposed assessments unless the taxpayer waives the limitations period ~~in writing before it expires by agreeing in writing to extend the period.~~ A taxpayer may waive the limitations period for either a definite or an indefinite time. If the taxpayer waives the limitations period, the Secretary may propose an assessment at any time within the time extended by the waiver."

**SECTION 35.** G.S. 105-256(a)(7) is repealed.

**SECTION 36.** Section 24.18(g) of S.L. 2006-66 reads as rewritten:

"**SECTION 24.18.(g)** This section is effective for taxable years beginning on or after January 1, 2006, and expires for taxable years beginning on or after ~~January 1, 2011.~~ January 1, 2013."

**SECTION 37.** G.S. 105-228.90(a) reads as rewritten:

"(a) Scope. – This Article applies to all of the following:

- (1) Subchapters I, V, and VIII of this ~~Chapter, to the Chapter.~~
- (2) The annual report filing requirements of G.S. 55-16-22, to the G.S. 55-16-22.
- (3) The primary forest product assessment levied under Article 12 of Chapter 113A of the General Statutes, and to Statutes.
- (4) The inspection taxes levied under Article 3 of Chapter 119 of the General Statutes.
- (5) Chapter 105A of the General Statutes."

**SECTION 38.** G.S. 105-164.41 is repealed.

**SECTION 39.** Reserved.

## **PROPERTY TAX**

**SECTION 40.** G.S. 105-330.4 is amended by adding a new subsection to read:

"(d) Tax payments submitted by mail are deemed to be received as of the date shown on the postmark affixed by the United States Postal Service. If no date is shown on the postmark or if the postmark is not affixed by the United States Postal Service, the tax payment is deemed to be received when the payment is received in the office of the tax collector. In any dispute arising under this subsection, the burden of proof is on the taxpayer to show that the payment was timely made."

**SECTION 41.** G.S. 105-333(14) reads as rewritten:

### **"§ 105-333. Definitions.**

The following definitions apply in this Article unless the context requires a different meaning:

- ...
- (14) Public service company. – A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. The term also includes any company performing a public service that is regulated by the United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, providers of mobile telecommunications service as defined in G.S. 105-164.3, a cable television company, or a radio or television broadcasting company."

**SECTION 42.(a)** The prefatory language for Section 65 of S.L. 2008-134 reads as rewritten:

"Section 13 of S.L. 2005-294, as amended by Section 31.5 of S.L. 2006-259 and ~~Section 22(e)~~Section 22(b) of S.L. 2007-527, reads as rewritten:"

**SECTION 42.(b)** Section 22(a) of S.L. 2010-95 is repealed.

**SECTION 42.(c)** Section 22(e) of S.L. 2010-95 reads as rewritten:

**"SECTION 22.(e)** Section 79 of S.L. 2008-134, as amended by Section 25(b) of S.L. 2009-445, reads as rewritten:

**"SECTION 79.** Sections 16 through 60 of this act become effective January 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law. ~~Section 63 of this act is repealed July 1, 2011.~~ Section 63 of this act is repealed July 1, 2013."

**SECTIONS 43-44.** Reserved.

## **LOCAL GOVERNMENT SALES AND USE TAX**

**SECTION 45.** G.S. 105-467(a) reads as rewritten:

"(a) Sales Tax. – The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the ~~transactions listed in this subsection. The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this subsection following:~~

- (1) A retailer's net taxable sales and gross receipts that are ~~The sales price of tangible personal property~~ subject to the general rate of sales tax imposed by the State under ~~G.S. 105-164.4(a)(1) and (a)(4b).~~G.S. 105-164.4.

- (2) ~~The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(2).~~
- (3) ~~The gross receipts derived from the rental of any room or other accommodations subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3).~~
- (4) ~~The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).~~
- (5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but is exempt from the State sales and use tax pursuant to G.S. 105-164.13B.
- (5a) The sales price of a bundled transaction that includes food subject to tax under subdivision (5) of this subsection, if the price of the food exceeds ten percent (10%) of the price of the bundle. A retailer must determine the price of food in a bundled transaction in accordance with G.S. 105-164.4D.
- (5b) The sales price of bread, rolls, and buns that are sold at a bakery thrift store and are exempt from State tax under G.S. 105-164.13(27a).
- (6) ~~The sales price of prepaid telephone calling service taxed as tangible personal property under G.S. 105-164.4(a)(4d).~~
- (7) ~~The gross receipts derived from providing satellite digital audio radio service subject to the general rate of tax under G.S. 105-164.4(a)(6a)."~~

## MISCELLANEOUS

**SECTION 46.** Section 8 of S.L. 2006-209 reads as rewritten:

"**SECTION 8.** As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the ~~Division of Legislative Drafting and Codification~~ Legislative Services Office to reletter or renumber section subdivisions includes the authority to renumber all the subdivisions in G.S. 20-79.4(b) in sequential and alphabetical order and to eliminate mixed number-letter subdivision designations. ~~This section expires July 1, 2011.~~"

**SECTION 47.(a)** G.S. 58-70-35(a) reads as rewritten:

"(a) Upon the filing of the application and information required by this Article, the applicant shall pay a nonrefundable fee of one thousand dollars (\$1,000), and no permit may be issued until this fee is paid. Fees collected under this subsection shall be ~~used in paying the expenses incurred in connection with the consideration of such applications and the issuance of such permits credited to the Insurance Regulatory Fund created under G.S. 58-6-25.~~"

**SECTION 47.(b)** G.S. 143-143.10(a) reads as rewritten:

"(a) There is created the North Carolina Manufactured Housing Board within the Department. The Board shall be composed of 11 members as follows:

- (1) The Commissioner of Insurance or the Commissioner's designee.
- (2) A manufactured home manufacturer.
- (3) A manufactured home dealer.
- (4) A representative of the banking and finance industry.
- (5) A representative of the insurance industry.
- (6) A manufactured home supplier.
- (7) A set-up contractor.
- (8) Two representatives of the general public.
- (9) A person who is employed with a HUD-approved housing counseling agency in the State.
- (10) An accountant.

The Commissioner or the Commissioner's designee shall chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative of the banking and finance industry, the employee of a HUD-approved housing counseling agency, and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board the manufactured home supplier, the accountant, and the set-up contractor. The Commissioner shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years. In the event of any vacancy of a position appointed by the Governor or Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The members of the Board designated in subdivisions (8), (9), and (10) of this subsection shall have no current or previous financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. ~~All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Part. In no case shall any salary, expense, or other obligation of the Board be charged against the General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Part. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the unexpended funds collected and received during that year. The remaining eighty five percent (85%) of these funds shall be credited to the General Fund.~~ Fees collected by the Board under this Article shall be credited to the Insurance Regulatory Fund created under G.S. 58-6-25."

**SECTIONS 48-49.** Reserved.

## **EFFECTIVE DATE**

**SECTION 50.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18<sup>th</sup> day of June, 2011.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 11:27 a.m. this 27<sup>th</sup> day of June, 2011